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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,071	01/20/2004	Peter Awakowicz	53055US	7176
23911	7590	06/02/2006	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			JASTRZAB, KRISANNE MARIE	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/759,071

**Applicant(s)**

AWAKOWICZ ET AL.

**Examiner**

Krisanne Jastrzab

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings et al., U.S. patent No. 4,952,370 in view of Wu et al., U.S. patent No., 6,572,819 B1.

Cummings et al., teach sterilization of the surfaces of a chamber wherein a combination of steam and hydrogen peroxide is created in a vaporizer, the combination is sent to the chamber to be sterilized and then condensed on the surfaces being treated. A vacuum is drawn to remove the condensate by evacuation. The vacuum is set such that the water vapor will be removed first to enhance contact of the hydrogen peroxide. The steps of the process are repeated with the introduction of the hydrogen peroxide/steam combination occurring in a plurality of injections. Cummings et al., further teach that the expansion and condensation of the vapor can occur within 60 seconds, as well as a pressure range of between 0.642 mm Hg to 9.2 mm Hg. See column 2, lines 40-53, column 3, lines 40-68, column 4, lines 20-27 and lines 45-62, column 5, lines 20-30, column 6, lines 1-5, 12-16, 20-25, 33-50 and 65-68, and column 7, lines 1-5.

Wu et al., teach the known and expected use of non-conductive, non-reactive materials which can withstand exposure to sterilants such as steam and hydrogen

peroxide for the construction of sterilization components. See column 2, lines 20-25, column 4, lines 5-11, and column 5, lines 30-57.

It would have been well within the purview of one of ordinary skill in the art to construct the sterilizer components of Cummings et al., of the materials taught in Wu et al., because such materials clearly withstand all parameters of the sterilization process to promote efficient sterilization of the articles to be treated.

With respect to claims 1 and 16-17, the instant claims recite a range of pressures from 1 mb to 10 mb, which equates to 0.75 mm Hg to 7.5 mm Hg, a range clearly falling within the range taught by Cummings et al., of 0.642 mm Hg to 9.2 mm Hg at column 4, lines 20-27.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on 5/8/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patents issued from any of Application serial No's 10/363,546 or 09/941,925 or 10/806,292 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Response to Arguments***

Applicant has amended the claims to remove the reference to "10 seconds" and as such, the rejection under 112, 1<sup>st</sup> paragraph has been overcome.

Applicant's arguments regarding the art rejection filed 5/8/2006 have been fully considered but they are not persuasive.

Applicant argues that the method of the instant invention is fundamentally different from that of Cummings et al., however, the Examiner would maintain that the claimed invention is clearly and properly suggested by the combination of Cummings et al., and Wu et al.

Applicant further argues that Cummings et al., fails to teach the amended limitations of claim 1, namely the given time frames and pressure ranges, however, the Examiner would disagree and maintain that the teaching of 60 seconds properly meets a time limitation requiring "several seconds" as instantly claimed, and Cummings et al., teach a pressure range that clearly encompasses that instantly claimed. The Examiner would further note that claims 1-10 are apparatus claims replete with intended use phraseology and Applicant has argued the patentable distinction of that intended use, which does not provide patentable distinction of the prior art apparatus is fully capable of performing that function, as the prior art of record in this application is.

Applicant further argues that Cummings et al., fail to teach the use of components of the sterilizer made from the instantly claimed materials, however, the Examiner would maintain that Wu et al., clearly teaches the efficacy of such materials in the harsh environment of sterilization and the combination clearly and properly provides those materials. Applicant also argues that there is no motivation to use the materials of Wu et al., and that operation of the system of Cummings et al., would be inhibited by the use of such materials because they wouldn't cool properly. The Examiner would disagree and note that the use of such materials would reduce the required cooling for the operation of Cummings and thus would not inhibit the basic principle of operation.

***Continued Examination Under 37 CFR 1.114***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

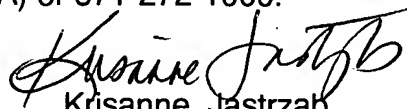
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Krisanne Jastrab  
Primary Examiner  
Art Unit 1744

May 30, 2006